

THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS - LUBBOCK
DIVISION

THE UNITED STATES OF AMERICA

vs.

THOMAS CAMPBELL BUTLER
CRIMINAL NO. 5:03-CR-003 7-C
(Supersedes Indictment returned April 10th, 2003)

The Grand Jury Charges:

At all times material to this Superseding Indictment:

1. Texas Tech University Health Sciences Center (TTUHSC), located in Lubbock, Texas, was a public health care institution operated by the State of Texas. Its mission and operation was the education of doctors, the treatment of patients, and for medical research. Its doctors and staff were employees of the State of Texas. TTUHSC's Department of Internal Medicine received benefits from federally funded health insurance carrier programs, predominantly Medicare, in amounts exceeding one million dollars a year for fiscal years 1998 through 2002. In addition, TTUHSC's Department of Internal Medicine received substantial Federal benefits from grants and contracts awarded by the United States Department of Health and Human Services for fiscal years 1998 through 2002. The Department of Internal Medicine included a medical research and treatment unit entitled the Infectious Diseases Division. The Infectious Diseases Division specialized in the treatment of patients suffering from infectious diseases and conducted research into the causes, the control, and the treatment of diseases caused by microorganisms.

2. Thomas Campbell Butler, M.D., defendant, was an agent and an employee

of TTUHSC. Butler, a medical doctor, was employed in the Department of Internal Medicine for TTUHSC and served as the Chief of the Division of Infectious Diseases. As a medical doctor and researcher for TTUHSC, Butler's duties included conducting clinical research at TTUHSC. As the Chief of the Division of Infectious Diseases, Butler's job duties included developing and soliciting research opportunities and clinical trials funded by government agencies or sponsored by pharmaceutical companies.

3. TTUSC's Institutional Review Board (11(13) was an internal oversight board that reviewed and authorized research at TTLTHSC involving human subjects. Federal Regulations and IKB rules required that, prior to any clinical trials involving human subjects, the Principal Investigator (P1) of the research submit an application to the IRB for review and approval. Butler was a P1 on clinical trials authorized by the IRD.

4. TTUHSC had Operating Policies and Procedures that governed the procedures for conducting clinical research at TTUHSC. TTUTSC policies and procedures, intended to prevent the use of TTI-IUSC resources for personal gain, required that doctors and researchers process all grants and contracts through the administrative channels of TTUHSC for review and approval.

5. Pharmacia & Upjohn Company (Pharmacia) was a pharmaceutical company based in Kalamazoo, Michigan that sponsored clinical drug research at TTUHSC and other institutions. Studies that Pharmacia sponsored at TTUHSC for which Butler was the

FI included:

- a. “The Safety and Efficacy of PNTJ-1827 16 Versus Rosiglitazone: A One-Year, Randomized, Double-Blind, Parallel Group, Active Comparator Study.” Protocol number 716-MIET-0096--015, IR~ number 01003, and TTUHSC accounting number 8013798651;
- b. “The Effect of PNU-182716 on HbA1c Levels in Type 2 Diabetic Patients, A Double-Blind, Placebo Controlled, Randomized, Multi-center Dose-Finding and Dose Frequency Study.” Protocol number 716~MET-0096-001 1, IRB number 00050, and TTUHSC accounting number 8013788492; and
- c. “Linezolid vs. Clarithromycin for the Treatment of Uncomplicated Skin and Superficial Skin Structure Infections.” Protocol number M/1260/0039, IRE number 98060, and TTUHSC accounting number 8013788190.

6. Chiron Corporation (Chiron) was a pharmaceutical company based in Emeryville, California that sponsored clinical drug research at TTUHSC and other institutions. Studies that Chiron sponsored at TTUHSC for which Butler was the P1 included:

- a. “Multicenter, Double-Blind, Placebo-Controlled, Randomized, Phase I

Study of Tifacogin [Recombinant Tissue Factor Pathway Inhibitor (rTFPI/SC-59735)] in

Severe Sepsis.” Protocol number TFP-007, IRE number 00091, and TTUHSC accounting number 8013788499; and

- b. “Multicenter, Single-Blind, Placebo-Controlled, Randomized, Dose Escalation Study of Recombinant Tissue Factor Pathway Inhibitor (*rTFPI/SC-59735*) in Severe Sepsis, Protocol number TF—006, [RB number 99053] and TTUHSC accounting number 8013788307.

7. Clinical drug trials at TTUHSC, sponsored by pharmaceutical companies such as Pharmacia and Chiron, generated revenue for TTUHSC. Funds that TTUHSC received from clinical drug trials paid expenses related to the studies.

8. The Hazardous Materials Transportation Act, as amended, was enacted by Congress to protect the general public from the risks to life and property inherent in the transportation of hazardous materials in commerce. The Act requires the Secretary of the United States Department of Transportation to designate as hazardous any materials that pose unreasonable risks to health and safety when transported in containers and to enact appropriate regulations to ensure the safe transportation of such materials in containers, including transportation of such materials by air.

9. The U.S. Department of Transportation has identified materials that are hazardous and are listed by the chemical name or hazardous characteristic category as set

forth in the Title 49 of the Code of Federal Regulations. The Secretary of the United States Department of Transportation has designated “infectious substances, affecting humans,” including the microorganism *Yersinia pestis*, as a hazardous material.

10. The regulations promulgated by the U.S. Department of Transportation prohibit any person from transporting a hazardous material in interstate, intrastate, and foreign commerce, including by aircraft, unless the hazardous material is transported in accordance with safety requirements set forth in the regulations. A person who offers a hazardous material for transportation in air commerce must ensure that the hazardous material is properly classified, documented, described, labeled, marked, packaged, and in proper condition for transportation. Emergency response information is also required. “The proper classification, description, packaging, markings, and labels of hazardous materials must identify the type of hazard, degree of danger, its safe handling, and provide the information necessary for responding to an accident or incident involving a hazardous material.

11. The United States Department of Commerce has the authority to regulate the export, of commodities, technology, and software from the United States to foreign countries. Through the Bureau of Industry and Security, the Department of Commerce requires export licenses or other authorization to export goods subject to regulation from the United States to foreign countries.

12. Persons engaged in the export of certain commodities, including the microorganism *Yersinia pestis*, are required to obtain authorization from the U.S. Department of Commerce in Washington, D.C. *Yersinia pestis* is a commodity listed on the Commerce Control List (“CCL”) under export control classification number I CJ 51 and requires authorization from the Department of Commerce for export to Tanzania.

13. At no time material to this Superseding Indictment did Thomas Campbell Butler, M.D., defendant, have an export license or any other authorization to export the microorganism *Yersinia pestis* from the United States to Tanzania.

14. The United States Food and Drug Administration (FDA) was an agency of the Department of Health and Human Services. The FDA offered research opportunities to medical professionals who encouraged the development and review of medications for the prevention and treatment of illness that could be caused by terrorists using biological agents. On March 22, 2002, the FDA issued a purchase order, number FDA P99275 0002 AC 00, for professional services to Butler, for the results of experimental research regarding the post-antibiotic effect of drugs on the microorganism *Yersinia pestis*. Additionally, on January 6, 2003, the FDA issued a purchase order P75 002 00 03 SH 00, for professional services to Butler, to provide experimental results from the contractor’s laboratory about the post-antibiotic effect of drugs on various strains of *Yersinia pestis* isolated from plague patients in Tanzania.

COUNTS I through 22
Theft, Embezzlement, and Fraud Concerning
Programs receiving federal Funds
(US U.S.C. § 666(a) and 2)

Beginning in or prior to 1998, and continuing until on or about January 15, 2003, Thomas Campbell Butler, M.D., defendant, devised a scheme and artifice to embezzle from, steal from, and defraud his employer, the Texas Tech University Health Sciences Center.

The Scheme

1. It was part of his scheme that Thomas Campbell Butler, M.D., defendant, negotiated contracts for the clinical drug studies at TTUHSC with Pharmacia and Chiron as set forth in the Paragraphs 5 and 6 of the Introduction of this Superseding Indictment. At about the same time, Butler also negotiated unauthorized and improper letter agreements and “shadow” agreements with Pharmacia and Chiron that provided that the pharmaceutical companies pay him amounts separate from and above the payments that the companies were obligated to pay TTUHSC under the terms of their clinical study agreements.

2. It was further part of this scheme that when Butler applied for IRB approval for the aforementioned Pharmacia and Chiron clinical drug studies he provided false and misleading information when he identified compensation, payments, and other financial incentives to researchers,

3. it was further part of this scheme that when Butler presented the aforementioned Pharmacia and Chiron clinical drug study contracts to contracting officials at TTUHSC, he failed to disclose and concealed the existence of additional letter agreements and “shadow” agreements that Butler had made with Pharmacia and Chiron which directed additional payments to him.

4. It was further part of this ‘scheme that Butler obtained payments from Pharmacia and Chiron pursuant to the unauthorized and improper letter agreements and “shadow” agreements. Butler then intentionally embezzled, stole, and converted to his own use these payments thereby depriving TTUHSC of the funds of the contracts and its right to his honest services.

5. As a further part of this scheme and in an attempt to conceal its existence, Butler made false and misleading statements to TTUHSC auditors during internal audits of the Chiron and Pharmacia studies.

6. It was a further part of this scheme that Butler negotiated purchase orders for professional services with the U.S. Food and Drug Administration as more fully described in Paragraph 14 of the Introduction of this Superseding Indictment. As a further part of the scheme and in an attempt to conceal its existence, Butler did not seek any TTUHSC administrative review and approval of the purchase order contracts that he negotiated with FDA.

7. It was further part of this scheme that butler obtained payments from the FDA pursuant to the March 22, 2002, unauthorized and improper purchase order. Butler then intentionally embezzled, stole, and converted to his own use these payments thereby depriving TTUHSC of the funds of the purchase order and its right to his honest services.

Violations

8. The Grand Jury adopts and realleges the allegations of the Introduction of this Superseding Indictment as though fully set forth herein.

9. On the Dates set out below, for the Counts set out below corresponding to those Dates, in' the Lubbock Division of the Northern District of Texas, Thomas Campbell Butler, M.D., defendant, did knowingly embezzle, steal, obtain by fraud, and otherwise without authority convert to his own use, and intentionally misapply property valued at \$5,000 or more, more fully identified in each Count below as the Amount, which funds were owned by the Texas Tech University Health Sciences Center (TTUHSC) by virtue of its contract with the pharmaceutical company identified as Payor below.

| <u>Date</u> | <u>Amount</u> | <u>Payor</u> |
|-------------|---------------|--------------|
| 08/19/1998 | \$ 9,600.00 | Pharmacia |
| 09/04/1998 | \$ 6,000.00 | Pharmacia |
| 10/19/1998 | \$28,000.00 | Pharmacia |
| 12/18/1998 | \$39,900.00 | Pharmacia |
| 03/04/1999 | \$ 5,000.00 | Chiron |
| 05/20/1999 | \$ 5,000.00 | Chiron |

| | | |
|------------|-------------|-----------|
| 06/21/1999 | \$15,000.00 | Chiron |
| 09/02/1999 | 15,000.00 | Chiron |
| 09/09/1999 | \$15,000.00 | Chiron |
| 02/02/2000 | \$ 5,000.00 | Chiron |
| 05/31/2000 | \$10,075.00 | Pharmacia |
| 06/08/2000 | \$ 5,000.00 | Chiron |
| 08/18/2000 | \$47,100.00 | Pharmacia |
| 12/21/2000 | \$ 5,000.00 | Chiron |
| 01/11/2001 | \$10,000.00 | Chiron |
| 01/25/2001 | \$10,000.00 | Chiron |
| 03/29/2001 | \$10,000.00 | Chiron |
| 04/05/2001 | \$ 5,000.00 | Chiron |
| 04/12/2001 | \$15,000.00 | Chiron |
| 05/03/2001 | \$ 5,000.00 | Chiron |
| 07/12/2001 | \$45,000.00 | Chiron |
| 08/16/2001 | \$10,000.00 | Chiron |

Each a violation of Title 18, United States Code, Sections 666(a)(1)(A) and 2.

COUNTS 23 through 35
 Mail Fraud
 (18 U.S.C. § 1341 and 2)

1. The Grand Jury adopts and realleges the allegations of the Introduction and

The Scheme portion of Counts 1 through 22 of this Superseding Indictment as though fully set forth herein.

2. On or about the dates set forth below, in the Lubbock Division of the Northern District of Texas and elsewhere, Thomas Campbell Butler, M.D., defendant, having devised and intending to devise a scheme and artifice to defraud, for the purpose of obtaining money by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of depriving the State of Texas and the Texas Tech University Health Sciences Center of its intangible right of honest service, for the purpose of executing such scheme and artifice and attempting to do so, knowingly caused to be delivered by the United States Postal Service (USPS) and United Parcel Service (UPS), a commercial interstate carrier, according to the directions thereon, envelopes addressed to the defendant's residence and office, which envelopes contained the funds obtained by Theft and fraud from the pharmaceutical companies as described below, each such use of the mails constituting a separate count of this Superseding Indictment.

| Date | Amount | Payor |
|------------|-------------|----------------|
| 08/19/1998 | \$ 9,600.00 | Pharmacia/USPS |
| 09/04/1998 | \$ 6,000.00 | Pharmacia/USPS |
| 10/19/1998 | \$28,000.00 | Pharmacia/USPS |
| 12/18/1998 | \$39,900.00 | Pharmacia/USPS |
| 03/04/1999 | \$ 5,000.00 | Chiron/UPS |
| 05/20/1999 | \$ 5,000.00 | Chiron/USPS |
| 02/02/2000 | \$ 5,000.00 | Chiron/USPS |

| | | |
|------------|-------------|----------------|
| 02/23/2000 | \$ 2,750.00 | Pharmacia/USPS |
| 05/08/2000 | \$ 4,500.00 | Pharmacia/USPS |
| 05/31/2000 | \$10,075.00 | Pharmacia/USPS |
| 08/18/2000 | \$47,100.00 | Pharmacia/USPS |
| 10/20/2000 | \$ 2,750.00 | Pharmacia/USPS |
| 01/22/2001 | \$ 1,500.00 | Pharmacia/USPS |

Each count being a violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 36 through 54
Wire Fraud
(18 ThS.C. ~ 1343 and 2)

1. The Grand Jury adopts and realleges the allegations of the Introduction and The Scheme portion of Counts 2 through 22 of this Superseding Indictment as though fully set forth herein.

2. On or about the dates set forth below, in the Lubbock Division of the Northern District of Texas and elsewhere, Thomas Campbell Butler, M.D., having devised and intending to devise a scheme and artifice to defraud, for the purpose of obtaining money by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of depriving the State of Texas and the Texas Tech University Health Sciences Center of its intangible right of honest service, and for the purpose of executing such scheme and artifice and attempting to do so, knowingly caused to be transmitted by wire

communication in interstate commerce any writing, signs, signals~ pictures, and sounds, to wit, the wire transfer of funds obtained by theft and fraud from the bank account of Chiron Corporation at Wachovia bank NA, in Atlanta, Georgia, and the United States Food and Drug Administration (FDA) in Rockville, Maryland, from the FDA account maintained by the United States Treasury Department at the Philadelphia Regional Financial Center, to the bank account owned by Thomas Campbell Butler, M.D., defendant, at Bank of America in Lubbock, Texas, as listed below, each such transmittal constituting a separate count of this Superseding Indictment.

| <u>Date</u> | <u>Amount</u> | |
|-------------|---------------|--------|
| 06/21/1999 | \$1 5,000.00 | Chiron |
| 09/02/1999 | \$15,000.00 | Chiron |
| 09/09/1999 | \$15,000.00 | Chiron |
| 06/08/2000 | \$ 5,000.00 | Chiron |
| 12/21/2000 | \$ 5,000.00 | Chiron |
| 01/11/2001 | \$10,000.00 | Chiron |
| 01/25/2001 | \$10,000.00 | Chiron |
| 03/29/2001 | \$10,000.00 | Chiron |
| 04/05/2001 | \$ 5,000.00 | Chiron |
| 04/12/2001 | \$15,000.00 | Chiron |
| 05/03/2001 | \$ 5,000.00 | Chiron |
| 07/12/2001 | \$45,000.00 | Chiron |
| 08/16/2001 | \$10,000.00 | Chiron |
| 05/08/2002 | \$ 4,000.00 | FDA |

| | | |
|------------|-------------|-----|
| 05/30/2002 | \$ 4,000.00 | FDA |
| 05/31/2002 | \$ 4,000.00 | FDA |
| 06/20/2002 | \$ 4,000.00 | FDA |
| 07/09/2002 | \$ 4,000.00 | FDA |
| 12/03/2002 | \$ 4,500.00 | FDA |

Each count being a violation of Title 1~, United States Code, Sections 1343 and 2.

COUNT 55.

Illegal Importation of Etiological Agent
(42 CYR. § 71.54, 71.2 and 42 U.S.C. § 271)

On or about April 15, 2002, at the Dallas/Ft. Worth International Airport in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and the Lubbock International Airport. in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, did knowingly import into the United States an etiological agent and an infectious substance, that is, a viable microorganism which causes, or may cause, human disease, to wit: *Yersinia pestis* ' bacteria, the causative agent of human plague, which etiological agent was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention,

A violation of 42 C.F.R. § 71.54, the penalty for which is found at 42 C.F.R. ~ 71.2, as provided in Section 368 of the Public Health Service Act (42 U.S.C. § 271).

COUNT 56

Smuggling Goods into the United States
(18 U.S.C. § 545)

Between on or about April 14, 2002, and April 15, 2002; at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, willfully and knowingly and with intent to defraud the United States, did smuggle and clandestinely introduce into the United States, merchandise which should have been invoiced, that is, *Yersinia pestis* bacteria,

A violation of Title 18, United States Code, Section 545.

COUNT 57

Smuggling Goods into the United States
(18 U.S.C. § 545, Second Paragraph)

Between on or about April 14, 2002, and April 15, 2002, at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did import

and bring into the United States certain merchandise contrary to law, that is, *Yersinia pestis* bacteria, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. §14&1 1.

A violation of Title 18, United States Code, Section 545.

COUNT 58
Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

1. The Grand Jury adopts and realleges the allegations of the Introduction and The Scheme portion of Counts I through 22 of this Superseding Indictment as though fully set forth herein.

2. Between on or about April 14, 2002, and continuing until on or about April 15, 2002, at Dar Es Salaam International Airport, Tanzania; London Heathrow International Airport, London, England; and Dallas Fort Worth International Airport, in the Fort Worth Division of the Northern District of Texas, utilizing British Airways; and Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, (Mi), defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer

hazardous material for transportation in containers by air, to wit: *Yersinia pestis* bacteria, in that the said Thomas Campbell Butler, M.D., failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the UN Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 172.400(a) by affixing the Class 6.2 label indicating an International Biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as required by 49 C.F.R. §§ 172.600, 172.602, and 172.604. A violation of Title 49, United States Code, Section 5124.

Transportation of Smuggled Goods
(18 U.S.C. § 545, Second Paragraph)

Between on or about June 23, 2002, and June 24, 2002, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, and at the Centers for Disease Control and Prevention at Fort Collins, Colorado, in the District of Colorado, and elsewhere, utilizing his private vehicle, Thomas Campbell Butler, M.D., defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof; the defendant, Thomas Campbell Butler, M.D., then knowing that said merchandise had been imported and brought into the United States contrary to law, in that the *Yersinia pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and

Prevention as required by 42 C.F.R. 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. § 148.11.

A violation of Title 18, United States Code, Section 545.

False Statement
(18 U.S.C. § 1001)

On or about September 7 or 8, 2002, in the Lubbock Division of the Northern District of Texas, and elsewhere, in a matter within the jurisdiction of the United States Department of Health and Human Services and the United States Department of Agriculture, Thomas Campbell Butler, M.D., defendant, did willfully cause an act to be done which if directly performed by him or another would be an offense against the United States, that is the said Thomas Campbell Butler, M.D., defendant, did knowingly and willfully make a false, fraudulent and fictitious material statement and representation to Dr. Michael Jones, Texas Tech University Health Sciences Center (TTUHSC) Laboratory Safety Officer and Responsible Facility Official (RFO) that he did not have any *Yersinia pestis* bacteria at that time, but that he had worked with it, when in truth and fact, the defendant Thomas Campbell Butler, M.D., knew that he then possessed *Yersinia pestis* bacteria located in his work areas at the TTUHSC facility, which caused the filing of an untrue Select Agent national notification document, which was mandated by Section 202(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, specifically, a "Notification of Possession of Select Agents or High Consequence Livestock Pathogens and Toxins Form QIVIB No. 0920-0561 0579-0201." which stated

that the TTUHSC facility did not possess any *Yersinia pestis* bacteria.

A violation of Title 18, United States Code, Section 1001 and 2.

COUNT 61
Transportation of Smuggled Goods
(18 U.S.C. § 545)

Between on or about September 9, 2002, and September 12, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; Memphis International Airport, Memphis, Tennessee, in the Western District of Tennessee; and Dar Es Salaarn International Airport, Tanzania, utilizing Federal Express; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof, the defendant, Thomas Campbell Butler, M.D., then knowing that said merchandise had been imported and brought into the United States contrary to law, in that the *Yersinia pestis* bacteria, an etiological agent, was riot accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. ~ 71 ~54; and the required declaration of such merchandise was not made as required by 19 C.F.R. ~148.1 1.

A violation of Title 18, United States Code, Section 545.

Unauthorized Export to Tanzania

1. The Grand Jury adopts and realleges the allegations of the Introduction of this Superseding Indictment as though fully set forth herein.

2. The defendant, Thomas Campbell Butler, M.D., exported 30 vials of the human pathogen *Yersinia pestis* via Federal Express to Dr. Eligius Lyamuya of the Muhimbili Medical Center in Dar Es Salaam, Tanzania.

3. Licensing Requirements for Exports:

a. The United States Department of Commerce, by virtue of the Export Administration Act (“BAA”) (50 U.S.C. §§240V-2420 (2000)), has the authority to regulate the export of commodities, technology, and software (collectively referred to hereinafter as “goods”) from the United States to foreign countries. The EAA authorizes the Secretary of Commerce to prohibit or curtail the export of goods to protect national security, foreign policy, nonproliferation and short supply interests of the United States. The Secretary of Commerce implements the authority provided by the BAA through the Export Administration Regulations (“EAR”) (15 C.F.R Parts 730-774 (2002)).

b. Through the Bureau of Industry and Security, the Department of Commerce requires export licenses or other authorization to export goods subject to the EAR from the United States to foreign countries.

c. Although the BAA was in lapse from August 21, 1994 through November 12, 2000, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CJ' .R., 2000 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. § §1701-1.707 (2000)). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), which has been extended by a Presidential Notice of August 14, 2002 (67 Fed Reg. 159 (August 16, 2002)), has continued the EAR in effect under TEEPA. A knowing or willful violation of IEEPA or the EAR is a criminal act.

d. Persons engaged in the export of certain commodities, including *Yersinia pestis*, are required to obtain authorization from the U.S. Department of Commerce in Washington, D.C.

e. *Yersinia pestis* is a commodity listed on the Commerce Control List ("CCL") under export control classification number I C35 1 and requires authorization from the Department of Commerce for export to Tanzania.

4. Violation: On or about September 9, 2002, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the United States

Department of Commerce, Thomas Campbell Butler, M.D., defendant, knowingly and willfully exported, and caused to be exported, *Yersinia pestis* bacteria, from the United States to Tanzania without the written authorization of the United States Government, when in fact, the defendant Thomas Campbell Butler, M.D., knew that the Yersinia Pestis required such written permission.

A violation of the International Emergency Economic Powers Act (IEEPA), Title 50, United States Code, Sections 1702 and 1705(b) and the Export Administration Regulations; 15 C.Y.R. §§ 764.2(a) and 764.2(e).

COUNT ~63
False Statement
(18 U.S.C. § 1001)

On or about September 9, 2002, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the United States Department of Commerce, Thomas Campbell Butler, M.D., did knowingly and willfully make false, fraudulent and fictitious material statements and representations; that is, filing a false export control document, specifically an International Air Waybill, which stated that the goods being exported were “laboratory materials,” when in fact, the defendant Thomas Campbell Butler, M.D., knew that the commodity was *Yersinia pestis* bacteria, In furtherance of the false statement, Thomas Campbell Butler, M.D., signed the International Air Waybill which stated that “These commodities, technology, or software were exported from the United States in accordance with Export Administration Regulations. Diversion contrary to U.S.

law prohibited,” when in fact the defendant Thomas Campbell Butler, M.D., knew a Department of Commerce license was required for export of *Yersinia pestis* bacteria, and that he had not obtained the required license. In furtherance of the false statement, Thomas Campbell Butler, M.D., defendant, failed to provide truthful information on the International Air Waybill which questioned whether a Shipper’s Export Declaration was needed, when in fact the defendant Thomas Campbell Butler, M.D., knew that the information was required.

A violation of Title 18, United States Code, Section 1001,

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Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

1. The Grand Jury adopts and realleges the allegations of the Introduction of this Superseding Indictment as though fully set forth herein..:

2. Between on or about September 9, 2002, and September 12, 2002, at Lubbock International Airport, Lubbock, Texas. in the Lubbock Division of the Northern District of Texas; and continuing into Memphis International Airport, Memphis, Tennessee, in the Western District of Tennessee; and continuing into Dar Es Salaam International Airport, Tanzania; and elsewhere, utilizing Federal Express, Thomas Campbell Butler, M.D., defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer hazardous material for transportation in commerce by air, to wit: *Yersinia*

pestis bacteria, in that the said Thomas Campbell Butler, MI), failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the UN Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 172.400(a) by affixing the Class 6.2 label indicating an International Biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as required by 49 C.F.R. §§ 172.600, 172.602, and 172.604.

A violation of Title 49, United States Code, Section 5124.

COUNT 65
Transportation of Smuggled Goods
(18 U.S.C. § 545,)

Between on or about October 1, 2002, and October 3, 2002, at Lubbock international Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas; Ronald Reagan Washington National Airport, in the Eastern District of Virginia; utilizing American Airlines; the United States Army Medical Research Institute of infectious Diseases (USAMRIID), Fort Detrick, Maryland, in the District of Maryland; and elsewhere, Thomas Campbell Butler, M.D., defendant, knowingly did facilitate the transportation of merchandise imported contrary to law, that is, *Yersinia pestis* bacteria, after the importation thereof, the defendant, Thomas Campbell Butler, M.D., then knowing that said merchandise had been imported and brought into the United States contrary to

law, in that the *Yersini pestis* bacteria, an etiological agent, was not accompanied by a permit issued by the Director of the Centers for Disease Control and Prevention as required by 42 C.F.R. § 71.54; and the required declaration of such merchandise was not made as required by 19 C.F.R. §148.11.

A violation of Title 18, United States Code, Section 545.

COUNT
Illegal Transportation of Hazardous Materials
(49 U.S.C. § 5124)

1. The Grand Jury adopts and realleges the allegations of the Introduction of this Superseding Indictment as though fully set forth herein.

2. Between, on or about October 1, 2002, and continuing until on or about October 3rd, 2002, at Lubbock International Airport, Lubbock, Texas, in the Lubbock Division of the Northern District of Texas; and continuing into Dallas/Ft. Worth International Airport, in the Fort Worth Division of the Northern District of Texas; and continuing into Ronald Reagan Washington National Airport, in the Eastern District of Virginia, utilizing American Airlines; and elsewhere, Thomas Campbell Butler, M.D., defendant, in violation of regulations and requirements related to the transportation of hazardous material prescribed by the Secretary of Transportation, did willfully offer hazardous material for transportation in commerce by air, to wit: *Yersinia pestis* bacteria, in that the said Thomas Campbell Butler, M.D., failed to properly complete shipping papers in accordance with 49 C.F.R. § 172.200(a); failed to properly mark the shipment in

accordance with 49 C.F.R. § 172.300(a), including proper shipping name, technical name, and the IATA Identification Number for infectious substances affecting humans; failed to properly label the shipment in accordance with 172.400(a) by affixing the Class 6.2 label indicating an international biohazard; and failed to provide Emergency Response information, specific contents, and Emergency Response telephone number as required by 49 C.F.R. §§ 172.600, 172.602, and 172.604.

A violation of Title 49, United States Code, Section 5124.

COUNT
False Statement
(18 U.S.C. § 1001)

On or about January 14, 2003, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, Thomas Campbell Butler, M.D., defendant, knowingly and willfully made a false, fictitious, and fraudulent material statement and representation, in that the defendant stated to FBI Special Agents Michael Orndorff and Shannon Fish that 30 vials containing *Yersinia pestis* plague bacteria which were under his control at his Texas Tech University Health Sciences Center (TTUHSC) laboratory were missing and presumed stolen as of January 11, 2003, when in truth and fact he knew this statement was false, fictitious, and fraudulent.

A violation of Title 18, United States Code, Section 1001.

COUNT 68
False Statements
(18 U.S.C. § 1001)

On or about January 14, 2003, at Lubbock, Texas, in the Lubbock Division of the Northern District of Texas, in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, Thomas Campbell Butler, M.D., defendant, knowingly and willfully made a false, fictitious, and fraudulent material statement and representation, in that the defendant, after being furnished with a copy of 42 C.F.R. § 72~6, relating to Additional Requirements for Facilities Transferring or Receiving Select Agents, stated to FBI Special Agents Michael Orndorff and Shannon Fish that he was unaware of the requirements contained therein when in truth and fact he was aware of the requirements.

A violation of Title 18, United States Code, Section 1001.

Make and Subscribe to False Tax Return
(26 V. S.C. § 72Q6(1))

A~ Introduction:

1. At all times material hereto, and during the calendar year 2001, Thomas Campbell Butler, M.D., defendant, was employed by Texas Tech University health Sciences Center (TTUHSC), as well as having contractual arrangements with two pharmaceutical companies.

2. During 2001, payments made directly to Thomas Campbell Butler, M.D., defendant, from the two pharmaceutical companies totaled \$114,000.00, which amount the two pharmaceutical companies reported on Internal Revenue Service Forms 1099 issued to the defendant.

3. Thomas Campbell Butler, M.D., defendant, reported this amount as income on a Schedule C, Profit or Loss From Business, to his tax return, Form 1040, for 2001. Additionally, Thomas Campbell Butler, M.D., defendant, claimed expenses that generated a large Schedule C loss, that partially offset his wages from TTUHSC. Thomas Campbell Butler, M.D., defendant, falsely claimed as a business expense on Line 17 of Schedule C the same \$114,000.00 that was reported as the Schedule C income.

4. The false expense of \$114,000.00', after allowing an additional \$1,200.00 expense, resulted in an understatement of the defendant's 2001 Federal tax liability of 39,693.

B. Violation:

On or about February 28, 2002, in the Lubbock Division of the Northern District of Texas and elsewhere, Thomas Campbell Butler, M.D., defendant, a resident of Lubbock, Texas, did willfully make and subscribe a United States Individual Income Tax Return, Form 1040, for the calendar year 2001, which was verified by a written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service,

which said income tax return he did not believe to be true and correct as to every material matter, in that the said income tax return, on line 17 of the Schedule C, which is titled Legal and Professional Services, reported \$120,200.00 expense, whereas, as he then and there well knew and believed, his correct Legal and Professional Services expense for 2001 to be approximately \$7,400.00.

A violation of Title 26, United States Code, Section 7206(1) and Title 18~ United States Code, Section 2.

A TRUE BILL: FOREMAN JANE J. BOYLE
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